IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4235 of 1998

to

FIRST APPEALNo 4249 of 1998
with
Cross Objections Nos.108 of 1998 to 122 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5 : No

GUJARAT HOUSING BOARD

Versus

JIVABHAI MADHABHAI CHAUDHARI

Appearance:

MRS KETTY A MEHTA for appellant

Mr. A.J. Patel with Mr. Ghanshyam Amin with Mr. Saurabh Amin for the claimants

Mr. M.R. Rawal, AGP, for the State in First Appeals Nos. 4235 to 4242 of 1998

Mr. H.L. Jani, AGP, for the State in First Appeals Nos.4243 to 4249 of 1998

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI
Date of decision: 08/03/99

COMMON ORAL JUDGMENT : (Per: Panchal. J.)

1. By means of filing these appeals under Section 54 of the Land Acquisition Act, 1894, read with Section 96 of the Code of Civil Procedure, 1908, the acquiring body i.e. Gujarat Housing Board, through its Executive Engineer, Ahmedabad, has challenged legality and propriety of the common judgment and award dated March 21, 1998, rendered by the learned Second Extra Assistant Judge, Ahmedabad (Rural), Mirzapur, in Land Acquisition Cases Nos. 205 of 1992 to 219 of 1992. All the land reference cases were consolidated with Land Acquisition Case No.205 of 1992 which was treated as the main case and the parties had led common evidence therein. The lands which are subject matter of the present appeals were placed under acquisition pursuant to publication of preliminary notification on March 12, 1990, which was issued under Section 4(1) of the Land Acquisition Act, 1894. As common questions of fact and law are involved in the appeals and the cross objections filed therein, we propose to dispose of them by this common judgment.

2. The Executive Engineer, Housing Division No.3, Gujarat Housing Board, Ahmedabad, had, by his letter dated September 25, 1989, proposed to acquire agricultural lands of village Gota, for the purpose of a scheme of residences which was floated by the Gujarat Housing Board. On scrutiny of the said proposal, the State Government was satisfied that the agricultural lands of village Gota were likely to be needed for the said purpose. Accordingly, notification under Section 4(1) of the Land Acquisition Act, 1894 ('Act' for short) was issued, which was published in the Government Gazette on March 12, 1990. Therein, the agricultural lands proposed to be acquired were specified. The land owners whose lands were proposed to be acquired were served with notices under Section 4 of the Act and they had filed their objections against the proposed acquisition. After considering their objections, the Special Land Acquisition Officer had forwarded his report under Section 5A(2) of the Act to the State Government. On consideration of the said report, the State Government was satisfied that the lands of village Gota which were specified in notification published under Section 4(1) of the Act, were needed for the purpose of scheme of residence which was floated by the Gujarat Housing Board.

Therefore, declaration under Section 6 of the Act was made which was published in official gazette on March 11, 1991. Interested persons were, thereafter, served with notices under Section 9 of the Act for determination of compensation. The interested persons had remained present before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.85/- per sq.mt. Having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated December 10, 1991 offered compensation to the claimants at the rate of Rs.57 per sq.mtr. The claimants were of the opinion that offer of compensation made by the Special Land Acquisition Officer was inadequate. Therefore, they submitted applications in writing requiring the Special Land Acquisition Officer to refer the matters to the Court for the purpose of determination of compensation. Accordingly, references were made to the Ahmedabad District Court (Rural), Mirzapur, Ahmedabad, which were numbered as Land Acquisition Cases Nos. 205 of 1992 to 219 of 1992. In the reference applications, the claimants mentioned that their agricultural lands which were acquired were highly fertile and as they were taking two to three crops in a year they were entitled to higher compensation. It was claimed that village Gota has got all the facilities such as electricity, water, etc and having regard to potentiality of the lands as building purposes they were entitled to compensation at the rate of Rs.350/- per sq.mtr. The Special Land Acquisition Officer, Gujarat Housing Board, Ahmedabad, contested the reference applications by filing common written statement Exh.13 whereas the present appellant, i.e. Gujarat Housing Board, Ahmedabad, contested reference applications by filing common written statement Exh.14. In the reply, it was averred that in view of the situation of the lands acquired as well as prevailing market value of the lands situated nearby, compensation determined and offered by the Special Land Acquisition Officer was just and, therefore, the reference application should be dismissed. It was stated in the reply that village Gota was not fully developed and as most of the lands acquired were fallow lands, the claimants were not entitled to higher compensation. What was claimed in the reply was that the provisions of Urban Land (Ceiling & Regulation) Act, 1976 were applicable to the acquired lands and as the lands acquired had no building potentiality at all, the reference applications should be dismissed. It was also mentioned in the reply that over-head electricity line was passing through most of the acquired lands as well as ONGC had also laid underground pipelines and, therefore, the claimants were not entitled to higher compensation.

Upon rival assertions made by the parties, necessary issues for determination were raised by the Reference Court. In order to substantiate the claim advanced in the reference applications, the claimants examined (1) Jivabhai Madhabhai Chaudhari, at Exh.38, (2) Dashratbhai S. Patel, at Exh.69, (3) Rameshbhai Sakabhai Patel, at Exh.70, and (4) Bhikhubhai R. Rami, at Exh.71. We may state that this witness, Bhikhubhai R. Rami is a Civil Engineer as well as Government Approved Valuer, and he had prepared his valuation report. On behalf of Executive Engineer, Housing Division No.III, Gujarat Housing Board, Ahmedabad, witness Priyavadan Natwarlal Parikh was examined at Exh.130. Witness Jivanbhai Madhabhai Chaudhari, in his deposition, narrated survey numbers regarding which references were sought by him as owner as well as power of attorney holders of other owners. The witness stated before the Court that the lands of village Gota were even and fertile and the irrigation facility was also available because of canal. The witness claimed that his acquired lands were abutting on Gota-Oganaj road. The witness stated that to east of his acquired lands, there was a residential colony known as "Mahatma Gandhi Vasahat" which was built by the Gujarat Slum Clearance Board, and there were about 3000 flats in the said colony. The witness mentioned in his deposition that about 10,000 people were residing in that colony and the colony had facilities of shopping center, school, dispensary, tar roads, telephone, water works, temple, derasar, etc. at the relevant time. The witness further stated in his evidence that the acquired lands were placed in the residential zone by the Ahmedabad Urban Development Authority and the municipal bus service run by the Corporation was available upto village Oganaj. The witness stated that to the south of the acquired lands, there was Gota-Oganaj road and just adjoining road, there was farm house belonging to one Bhavna Construction and just near the said farm house, there was another farm house belonging to one Mr.C.K. Patel. It was claimed by the said witness that near those two farm houses, there was a petrol pump and by the side of the petrol pump, there was Hide & Ride Hotel which was adjoining to Umiya Mata Campus. The witness claimed that just adjoining Umiya Mata Campus, Bhagwat Vidyapith is situated and adjoining to the said Vidyapith, Sola Civil Hospital is situated and immediately thereafter, there is a building in which Gujarat High Court is established. The witness asserted in his deposition that the High Court building was at a distance of 1/2 to 3/4 kms. from his acquired lands. The witness further claimed in his deposition that to the north of his acquired lands, there was Bhangda Club which was at a distance of two fields

and behind Bhangda Club, there was a scheme of farm houses floated by one N.G. Patel who had divided his lands into several plots and each plot was being sold at the rate of Rs.600/- per sq.mtr at the time of issuance of notification under Section 4(1) of the Act. The witness stated that just adjoining the farm houses of Mr. N.G. Patel, there was Sterling Club and Green Wood Club, wherein also, farm houses were developed in an area admeasuring 1000 bigha. According to the witness, to the east of the acquired lands, there was sim of village Gota wherein 150 show rooms of granite and marbles were established as well as there were other shops also. The witness claimed that Gota Chokdi is being considered as biggest centre in Gujarat for marble and granite business. The witness informed the Court that just near the marble shops, there is Silver Oak Club and thereafter there are several factories and shops etc. The witness claimed that, between his acquired lands and sim of village Oganaj, there were about eight to ten housing societies as on the date of publication of notification under Section 4(1) of the Act. The witness told the court that in village Oganaj, facilities of telephone, shopping center, school, cooperative societies, etc. were available. The witness stated before the court that for the purpose of valuing the acquired lands, the claimants had approached Mr. B.R. Rami who was Government Approved Valuer and as per the report of the valuer, the market value of the acquired lands was Rs.310 per sq.mtr. The witness further produced the consent award rendered in Land Acquisition Case No.19 of 1994 in relation to the lands which were acquired for Gujarat High Court building at Exh.39 which indicated that the claimants therein were paid compensation at the rate of Rs.251/- per sq.mtr. The witness stressed that the acquired lands were fully developed and the lands nearby were being sold at the rate of Rs.1000 to Rs.1200 per sq.mtr in the year 1998. The witness also stated in his deposition that Slum Clearance Board had plotted the lands which were auctioned. According to this witness, the trustees of Shubh Mangalam Swetamber Moorti Pujak Jain Trust had applied for allotment of land in the year 1988 and the Slum Clearance Board had allotted a piece of land to the said Trust at the rate of Rs.156 per sq.mtr. which was 50% of the market value, as it was being allotted to a trust. The order by which the said Trust was allotted the land was produced by the witness at Exh.67. The witness also produced document Exh.68 by which lands belonging to one Bhikhiben were permitted to be converted from new tenure lands to old tenure lands by the competent authority and the market value assessed by the State Government was Rs.480 per sq.mtr. The witness

further produced another document at Exh.61 which indicated that Nishaben Chaudhary was allotted Survey No.271 of village Sola by the State Government at the rate of Rs.400/- per sq.mtr and the witness claimed that distance between the acquired lands and the land allotted to Nishaben Chaudhary was about 1 k.m. and both the lands were similar and having same potentiality. The witness also produced another document at Exh.63 which showed that Mohanbhai Khembhai Patel of village Jagatpur had sold Survey No.73 belonging to him to Hastinapur Cooperative Housing Society at the rate of Rs.1160/- per sq.mtr and according to the witness the land sold by Mohanbhai was at a distance of 1/2 km. from the acquired lands. In respect of the land belonging to Mohanbhai also, the witness claimed that both the lands were similar and having the same potentiality. According to the witness, determination of compensation by the Special Land Acquisition Officer was inadequate and he claimed that the claimants were entitled to compensation at the rate of Rs.350/- per sq.mtr. During his cross examination, the witness admitted that the acquired lands were purchased by him in the year 1982-83 at the rate of Rs.60/- per sq.mtrs. We may state that, though the witness had shown willingness to produce sale deeds on record, those sale deeds were not produced during the course of hearing of the reference applications. The witness admitted that the acquired lands were in agricultural zone and as the lands were acquired by the Gujarat Housing board, the same were placed in the residential zone. The witness stated in his cross examination that, as the acquired lands were placed in the residential zone, provisions of Urban (Land Ceiling) Act, 1976 were applicable. In cross examination of this witness, it came out that the total measurement of the acquired lands was about 9 Hectares 35 Are and 24 Sq.mtrs. The witness also stated that, in the revenue record, it was not mentioned as to which crop was being raised on which land. The witness admitted that the ONGC had laid pipelines which were passing through the acquired lands. He also admitted that high-tension electric line was also passing through some of the acquired lands. The witness stated that in the year 1985, he had shown his willingness to sell land at the rate of Rs.85/- per sq.yard. The witness denied the suggestion that he had sold his lands to one Jitendra Dalal at the rate of Rs.12.77 ps per sq.mtr. Witness Dashratbhai S. Patel, who was examined at Exh.69, stated in his deposition that Survey No.464 was sold by him to Naranbhai Shamalbhai and Ratibhai Shamalbhai by deed dated March 28, 1987 for a consideration of Rs.13,31,600.00 and the land sold was agricultural land.

The sale deed indicated that this witness had sold his land at the rate of Rs.239 per sq.mtr. In his cross examination, this witness stated that survey No.464 which was sold by him had well in it and the land was even. He also admitted in his evidence that survey No.464 was situated near Sola village and was abutting on Sola-Vadaj main road. Witness Rameshbhai S. Patel, Exh.70, was Sarpanch of village Oganaj. This witness also claimed in his deposition that Gota Chokdi was most developed place on Ahmedabad-Gandhinagar highway. According to this witness, the lands which were acquired for the High Court building were waste lands and lands acquired for the High Court building belonged to Jayantibhai Naranbhai, Kanubhai Naranbhai and Lalbhai Naranbhai. The witness in his cross examination admitted that distance between Gota Chokdi and Sola Chokdi was about 3 kms. Witness Bhikhubhai R. Rami who was examined at Exh.71 informed the Court that he was Government Approved Valuer and had experience of about 18 years in valuing the properties. He stated before the Court that valuation report would normally be prepared having regard to sale instances of nearby lands, potentiality of land to be valued, etc. He produced valuation report prepared by him at Exh.72. He claimed that he had personally visited the acquired lands of village Gota and had assessed the value of the acquired lands at Rs.310 per sq.mtr. as on March 12, 1990, which was the date on which notification issued under Section 4(1) of the Act was published. The witness deposed before the Court, that before valuing the acquired lands, he had taken into consideration sale deed of nearby lands as well as other relevant documents including the consent award rendered in respect of the lands which were acquired for the High Court building wherein the rate of lands indicated was Rs.251 per sq.mtr. The witness stated before the Court that, over and above the compensation which was paid to the claimants at the rate of Rs.251 per sq.mtr. in case of acquisition of land for High Court building, the claimants were also paid incentive at the rate of 35%. During his cross examination, this witness denied suggestion made on behalf of the acquiring body that there was no development in village Gota in the year 1990-91 or that no society was situated near the lands acquired. This witness also stated in his deposition that the acquired lands were at a distance of 1/2 k.m from Gandhinagar-Sarkhej Highway. The witness Priyavadan Natwarlal Parikh who was examined on behalf of the Executive Engineer, Housing Division No.3, Ahmedabad, at Exh.130, stated in his deposition that, when the proceedings were initiated to acquire the lands in question, at that time, there were buildings constructed

by the Slum Clearance Board and there was only one club, namely, Bhangda Club. According to this witness, there were no societies between the acquired lands and Sola cross roads. The witness informed the Court that the building of Gujarat High Court was to south at a distance of about 2.1/2 to 3 kms. According to this witness, no development had taken place near the acquired lands, and most of the development had taken place on south of the acquired lands. This witness stated before the court that the acquired lands were in agricultural zone and the lands could not have been put to any other use except that of agricultural. The witness admitted in his evidence that in the residential colony constructed by the Slum Clearance Board, there are facilities like tar road, gutter, street light, water, etc and the Slum Clearance Board had given a plot admeasuring 100 sq.mtrs to Shubh Mangalam Swetamber Moorti Pujak Jain Trust at basic rate. This witness in his evidence produced certified copy of sale indexes at Exh.74 to 128 to establish that the claimants were not entitled to higher compensation. In his cross examination, the witness stated that the ONGC had laid pipeline only in Survey No.74 of village Gota and in no other land. What was admitted by him was that the Gujarat housing Board normally acquire that land to which facilities like electricity, water, municipal bus service, having approach road, etc. are available. This witness also stated in his cross examination that in the residential colony known as "Mahatma Gandhi Vasahat" all essential facilities were available and the acquired lands were adjoining the said colony. The witness further informed the Court that, normally, the Gujarat Housing Board proposes to construct buildings at such a place where there is immediate demand for the same.

3. On appreciation of evidence led by the parties, the Reference Court held that the lands of villages Sola, Gota, and Oganaj are situated adjoining each other and the documents produced on behalf of the claimants as well as acquiring body established that the acquired lands were situated nearby Gandhinagar-Sarkhej Highway and were touching the road of Oganaj-Gota road. The Reference Court concluded that, as neither vendor nor vendee nor scribe of any sale deed was examined, the sale indexes produced on behalf of the acquiring body were neither relevant nor comparable for the purpose of determining the market value of the acquired lands. The Reference Court held that previous award rendered in Land Acquisition Case No.1020 of 1986 which was produced at Exh.142 by the Special Land Acquisition Officer, Gujarat Housing Board, Ahmedabad, was not relevant, as, in that

case, notification under Section 4(1) of the Act was published in the year 1982 and the land in respect of which the said award was rendered was situated far away from the acquired lands as well as touching Sarkhej-Gandhinagar Highway. According to the Reference Court valuation report prepared by Mr.Rami who was Government Approved Valuer, was relevant, which indicated that market value of the acquired lands at the relevant time was Rs.310/- per sq.mtr. The Reference Court further deduced that the sale instance produced by the claimants at Exh.62 was also relevant for the purpose of determining the market value of the acquired lands and the said document indicated that the land was sold at the rate of Rs.239 per sq.mtr in May 1987. The Reference Court also placed reliance on deposition of witness Dashratbhai S. Patel for the purpose of relying on the deed which was produced at Exh.621. According to the Reference Court, consent award made in respect of the lands acquired for the new High Court building was also relevant for the purpose of determining the market value of the acquired lands. The Reference Court took into consideration overall development which had taken place near the acquired lands and held that the acquired lands had potentiality of being used for building purpose. In the ultimate decision, the Reference Court held that the claimants were entitled to compensation at the rate of Rs.240/- per sq.mtr by the impugned award giving rise to the present appeals and the cross objections. We may state that the Reference Court has also given direction in the operative portion of the order to deduct 5% government share in case of new tenure lands.

4. Mrs. K.A. Mehta, learned counsel for the appellant submitted that, the previous award rendered in Land Acquisition Case No.1020 of 1986 delivered by the learned Second Joint District Judge, Ahmedabad (Rural),Mirzapur, and produced at Exh.142, as well as letter written by the ONGC to Gujarat Housing Board which was produced at Exh.131 and copy of map of AUDA showing the situation of the acquired lands which was produced at Exh.135 ought to have been relied on by the Reference Court and the Court should not have awarded compensation to the claimants more than Rs.57/- per sq.mtr. The learned counsel for the appellant stressed that copy of the letter of the Gujarat Slum Clearance Board along with its annexures produced at Exh.131 as well as certified copies of indexes of sale deeds of comparable lands produced at Exh.74 to 128 as well as copy of village form No.7/12 produced at Exh.44 to 58, would indicate that the claimants were not entitled to higher compensation than what was awarded by the Special Land Acquisition officer

and, therefore, the reference applications ought to have been dismissed by the Reference Court. It was highlighted by the learned counsel for the appellant that the lands in question were not developed lands at all nor facilities like business, school, post-office were available and as the lands were in agricultural zone for number of years and were converted into residential zone at the instance of the Gujarat Housing board, the claimants should not have been awarded compensation at the rate of Rs.240/- per sq.mtr. According to the learned counsel, the Reference Court failed to consider the important question that the lands in question were in Urban Agglomeration of Ahmedabd City and were covered by the provisions of Urban Land (Ceiling & Regulation) Act,1976, and, therefore, the claimants could not have sold the lands and would not be able to get market value of the lands admeasuring more than 1000 sq.mtrs which was the ceiling limit and, therefore, the market value should not have been assessed by the Reference Court at the rate of Rs.240/- per sq.mtr. It was asserted on behalf of the appellant that no cogent evidence was led by the claimants to establish rise in price of the lands nor it was established that there was any development on Sarkhej-Gandhinagar Highway and, therefore, the impugned common award should be set aside. The learned counsel for the appellant submitted that the sale instance produced by the Acquiring Body at Exh.74 to 128 established that the market value fixed by the Special Land Acquisition Officer in his award was the exact market value prevailing at the relevant time and, therefore, the reference applications should have been dismissed by the Reference Court. According to learned counsel Mrs.Mehta, opinion given by the valuer in his report was not substantiated by the evidence produced on the record of the case in the nature of sale instances and, therefore, the same could not have been relied upon by the Reference Court while determining market value of the acquired lands. What was highlighted was that the Reference Court failed to appreciate that because of acquisition for the Gujarat Housing Board, the acquired agricultural lands were placed in the residential zone and, therefore, the claimants should not have been given advantage of that fact as the Gujarat Housing Board was required to incur expenses for developing the lands acquired. It was pointed out by the learned counsel for the appellant that some of the acquired lands abut on Gota-Oganaj road whereas rest of the lands were situated in interior and, therefore, belting method ought to have been adopted by the Reference Court while awarding compensation for the acquired lands and compensation should not have been awarded at the flat rate for all the

acquired lands. Lastly, it was submitted that the claimants had claimed compensation at Rs.85/- per sq.mtr before the Special Land Acquisition Officer and as they were not entitled to more than what was claimed by them before the Special Land Acquisition Officer, the impugned award should be set aside.

5. The learned counsel appearing for the Special Land Acquisition Officer, Gujarat Housing board, Ahmedabad, has adopted the arguments of the learned counsel for the appellant and pleaded that having regard to the facts of the case the impugned common award should be set aside.

6. Mr. A.J.Patel, learned counsel for the claimants, submitted that the Reference Court, after taking into consideration oral evidence adduced on behalf of the claimants as well as documentary evidence produced by the claimants, has rightly concluded that there was development near the acquired lands and the acquired lands had potentiality of being used for building purpose. The learned counsel stressed that Exh.62 indicated that land belonging to Dashratbhai S.Patel was sold on May 28, 1987 at the rate of Rs.239/- per sq.mtr and as land was sold by an agriculturist to another agriculturist willingly, the Reference Court was justified in considering the same while determining the market value of the acquired lands. It was pleaded that no document which was not relevant was taken into consideration by the Reference Court before passing the award in favour of the claimants. The learned counsel for the claimants emphasized that, though there was distance between Sola village and Gota village, distance was not much and, therefore, Exh.62 dated May 28, 1987 should be taken into consideration while determining the market value of the acquired lands as on March 12, 1990 which is the date of publication of notification under Section 4(1) of the Act. According to the learned counsel, evidence of Government Approved Valuer, Mr. Rami, read with his report, would indicate that the market value of the acquired lands at the relevant time was Rs.310/- per sq.mtr and, therefore, the award of compensation at the rate of Rs.240/- per sq.mtr should not be treated as excessive by the Court. The learned counsel further emphasized that the consent award rendered in respect of the lands, which were acquired for the High Court building, furnishes good guidance for the purpose of determining the market value of the acquired lands on the relevant date and, if that is taken into consideration, it cannot be said that the award made by the Reference Court is either excessive or illegal in any

manner so as to warrant interference of the Court in the present appeals. The learned counsel vehemently submitted that the lands in question are not abutting on Gandhinagar-Sarkhej Highway and, therefore, belting method should not be adopted by the Court while determining the market value of the acquired lands on the relevant date. Placing reliance on the decisions rendered in the case of (1) State of Kerala vs M.K. Kunhikannan Nambiar, AIR 1996 Supreme Court 906 and (2) Dy. General Manager, O.N.G.C. vs. Chaturji Lalaji and others, 1998 (1) GLR 130, it was submitted that direction could not have been given by the Reference Court to deduct 5% share from the compensation payable to the claimants in respect of new tenure lands and, therefore, the said direction should be set aside. The learned counsel stressed that, in view of over all developments which had taken place near the acquired lands and having regard to potentiality of the acquired lands for building purpose, the claimants are entitled to compensation at the rate of Rs.350/- per sq.mtr and, therefore, while dismissing the appeals filed by the acquiring body, cross objections filed by the claimants should be allowed. It was also submitted by the learned counsel for the claimants that a claimant is entitled to claim more than what was claimed by him before the Special Land Acquisition Officer and, therefore, the impugned award is not liable to be set aside on the ground that the claimants claimed more amount of compensation before the Reference Court than what was claimed by them before the Special Land Acquisition Officer.

7. We have taken into consideration oral as well as documentary evidence produced by the parties on the record of the case. The record of the case indicates that on the date of publication of notification issued under Section 4(1) of the Act, the population of village Gota was about 10,000. There is an approach road available to the village which connects the village with Sarkhej-Gandhinagar Highway. In the village, facilities like primary school, middle school, post office, electricity, S.T. bus service, primary health center, bank service, etc. are available. The record further shows that the main occupation of the inhabitants of the village is agriculture and with the help of water received from the well, the agriculturists are able to raise crops of juwar, millet, rice, tuwar, aranda, raida, rai, wheat, nilgiri, etc. It is an admitted position that to the east of the acquired lands, there is a residential colony known as Mahatma Gandhi Vasahat which was established by the Gujarat Slum Clearance Board at the relevant date. The said residential colony consists

of 3000 flats wherein 10,000 people live. The said colony has also facilities of shopping center, school, dispensary, tar road, telephone, water works, temple, etc. To the north of the acquired lands, there are two farm houses and, thereafter, a petrol pump is situated. Just near the petrol pump there is Hide & Ride Hotel and near the said hotel, there is campus of temple of Umiya Mata. Just adjoining the said temple, compound of Bhagwat Vidyapith begins and, adjoining the Vidyapith, there is Sola Civil Hospital since years. New Gujarat High Court building is situated adjoining the Sola Civil Hospital. Though the witness examined on behalf of the acquiring body claimed that distance between the acquired lands and the new High Court building is 3 kms., the record of the case establishes that distance is less than 1 km. Again, the evidence of witness Jivanbhai Madhabhai Chaudhari would indicate that to the east of the acquired lands, there is sim of village Gota where there are show-rooms and godowns of granite and marbles, as well as clubs and shops. Even Gota village itself cannot be considered to be underdeveloped at all as in the village facilities of telephone, shopping center, school, cooperative societies, municipal bus service, etc. are available. Having regard to the materials placed on record, there is no manner of doubt that near the acquired lands development had taken place at the relevant time and the lands acquired had building potentiality. The market value of the acquired lands cannot only be its value with reference to the actual use to which it was put on the relevant date envisaged under Section 4(1) of the Act, but ought to be its value with reference to the better use to which it is reasonably capable of being put in the immediate or near future. Possibility of the acquired land being put to certain use on the date envisaged under Section 4(1) of the Act for better use in the immediate or near future is regarded as its potentiality. When the acquired land has the potentiality of being used for building purposes in the immediate or near future, it is such potentiality which is regarded as building potentiality of the acquired land. Therefore, if the land acquired has the building potentiality, its value, like the value of any other potentiality of the land should necessarily be taken into account for determining market value of such land. When the land with building potentiality is acquired, the price which its willing seller could reasonably expect to obtain from its willing purchaser with reference to the date envisaged in notification under Section 4(1) of the Act, ought to, necessarily, include that portion of the price of the land attributable to its building potentiality. Such price of the acquired land then

becomes its market value as per Section 23(1) of the Act. It is true that the fact that acquired land has been acquired for building purpose cannot be a sufficient circumstance to regard it as land with building potentiality. Possibility of user of acquired land for building purpose can never be wholly a matter of conjecture or surmise or guess. On the other hand, it should be matter of inference to be drawn on appreciation of material placed on record to establish such possibility. The material so placed on record or made available must necessarily relate to the matters such as (1) the situation of the acquired land vis-a-vis the city or town or village which has been growing in size because of its commercial, industrial, educational, religious or any other kind of importance or because of its explosive population, (2) the suitability of the acquired land for putting up buildings, be they residential, commercial or industrial as the case may be; (3) possibility of obtaining amenities like water, drainage and electricity supply for occupants of building to be put up on that land; (4) absence of statutory impediments or the like for using the acquired land for building purpose. (5) existence of highways, public roads, lay-outs of building plots or developed residential extensions in the vicinity or close proximity of the acquired land. (6) benefits or advantages of educational institutions, health-care centers or the like in the surrounding areas of the acquired land which may become available to the occupiers of building if built on the acquired land; and (7) lands around the acquired land or the acquired land itself being in demand for building purposes, etc. The material to be so placed on record or made available in respect of the said matters and the like cannot have the needed evidentiary value for concluding that the acquired land is capable of being used for building purposes in the immediate or near future unless the same is supported by reliable documentary evidence as far as the circumstances permit. The materials placed on the record of the present case would indicate that there was over all development near the acquired lands as on the date of publication of notification under Section 4(1) of the Act and, in view of several premises which had come up near the acquired lands, it would be reasonable to hold that the acquired lands had building potentiality. It is true that the acquired lands were in Urban Agglomeration of Ahmedabad City and were subject to the provisions of the Gujarat Agricultural Lands Ceiling Act, 1960. But, that does not mean that the lands cannot be used for non-agricultural purpose, at all. The evidence of Jivanbhai Madhabhai Chaudhari shows that he himself had made application for non-agricultural use of his lands

and the same was pending for consideration. On certain conditions being fulfilled, an agricultural land can always be permitted to be used for non-agricultural purpose. Even if it is assumed for the sake of argument that provisions of Urban Land (Ceiling & Regulation) Act, 1976, would be applicable to the acquired lands, under certain circumstances, the land can be exempted from the provisions of the said Act. Section 21 of the Act postulates that, if the owner of the excess land is desirous of constructing residence for the weaker section of the society on certain conditions being fulfilled, exemption can be granted by the competent authority. Therefore, it is not true to say that because of application of provision of Urban Land (Ceiling & Regulation) Act, 1976 or Gujarat Agricultural Land Ceiling Act,1960, the lands had no building potentiality at all. As admitted by witness of the acquiring body, the Housing Board normally selects that site where facilities like electricity, water, bus service, approach road, etc. are available and where there is immediate demand for residences. His evidence further indicates that just adjoining acquired lands, there is big residential colony wherein all basic facilities such as electricity, gutter, water, bus service, tar roads, etc. were available on the relevant date. Therefore, building potentiality of the acquired lands will have to be considered while determining the market value.

8. The market value of the acquired land with building potentiality comprises of the market value of the land having regard to the use to which it was put on the relevant date envisaged under Section 4(1) of the Act plus the increase in that market value because of the possibility of the acquired land being used for putting up buildings, in the immediate or near future. If there is any other land with building potentiality similar to the acquired land which had been sold for a price obtained by a willing seller from a willing purchaser, such price could be taken to be the market value of the acquired land, in that, it would have comprised of the market value of the land as was being actually used plus increase in price attributable to its building potentiality. If the prices fetched by the sale of similar land with building potentiality in the neighbourhood or vicinity of the acquired lands with building potentiality, as on the relevant date envisaged under Section 4(1) of the Act, are unavailable, it becomes necessary to find out whether any building plots laid out in a land similar to the acquired land had been sold by a willing seller to a wiling buyer on or near about the relevant date and then to find out what would

be the price which the acquired land would have fetched if it had been sold by making it into building plots similar to those sold. In other words, a hypothetical layout of building plots in the acquired land similar to that of the layout of building plots actually made in the other similar land, has to be prepared, and the price fetched by sale of building plots in the layout actually made should form the basis for fixing the total price of the acquired land with building potentiality to be got if plots similar to other plots had been made in the latter land and sold by taking into account plus factors and minus factors involved in the process.

9. Here, in this case, Exh.62, which is certified copy of index of sale register, indicates that Survey No.464 of village Sola was sold by Dashratbhai Shivabhai Patel and others to Narain Shyamalbhai Ratibhai for a consideration of Rs.13,31,000. The land admeasured 5564 sq.mtrs and, therefore, roughly the price would come to Rs.239 per sq.mtr. The sale took place on May 28, 1987. The evidence of witness Dashratbhai S. Patel, Exh.69, shows that the sale was by an agriculturist to another agriculturist and the land was sold at the market value. The evidence of Dashratbhai indicates that sale of Survey No.464 of village Sola was voluntary. It is true that there is distance of roughly 3 kms. between the acquired lands and Survey No.464. However, the fact that the sale had taken place in the month of May 1987 and notification under Section 4(1) of the Act was published for the acquired lands in March 1990, cannot be lost sight of. Because of distance between the acquired lands and Survey No.464, the claimants may not be entitled to rise in price of lands, which normally would have been granted if there is time lag between date of execution of comparable sale deed and publication of notification under Section 4(1) of the Act. The Supreme court has emphasized in several reported decisions that, in case of compulsory acquisition, it is the duty of the Court to scrutinize evidence led by the claimants minutely and to award just compensation for the acquired land. Therefore, because of distance, reasonable rise in price should not be considered in favour of the claimants, but Exh.62 cannot be ignored altogether while determining market price of the acquired lands. Again, Exh.63, which is sale deed relating to Survey No.73 of village Jagatpur would indicate that its owner Mohanbhai Khemabhai Patel had sold the same to Hastinapur Cooperative Housing Society at the rate of Rs.1160 per sq.mtr. by deed dated November 1, 1988. Witness Jivanbhai Madhabhai Chaudhari in his evidence has claimed that Survey No.73 of Jagatpur is situated at a distance of 1/2 kms. from the acquired

lands and the acquired lands as well as Survey No.73 of village Jagatpur are similar in all respects. This assertion made by the witness is not challenged by the acquiring body at all. But, in this case, neither seller nor purchaser nor scribe of the deed was examined to establish voluntary nature of sale transaction and,therefore, the same has rightly not been considered by the Reference Court while determining the market value of the acquired lands. So far as the evidence of the Government Approved Valuer is concerned, his evidence would show that he had personally visited the acquired lands and after taking into consideration relevant factors such as price of land situated nearby, development which had taken place near acquired lands, and building potentiality of the acquired lands, he had valued the lands. His evidence further indicates that, before valuing the acquired lands, he had also taken into consideration the consent award rendered by the Special Land Acquisition Officer in respect of the lands which were acquired for the new High Court building wherein the claimants were awarded compensation at the rate of Rs.251 per sq.mtr. and also incentive at the rate of 35%. The government Approved Valuer has deposed before the Court that the acquired lands were evaluated at the rate of Rs.310/- per sq.mtr as on the relevant date. Though this witness has been cross examined searchingly, nothing has been brought on the record of the case which would demolish his assertion that he had taken into consideration relevant factors before evaluating the acquired lands. Therefore, his evidence would also be relevant and material while determining the market value of the acquired lands. Again, the claimants have produced the consent award rendered by the Special Land Acquisition Officer in respect of the lands which were acquired for the new Gujarat High Court building at Exh.39. It shows that proposal to acquire the lands was made on July 30, 1990 whereas notification issued under Section 4(1) of the Act was published on July 29, 1991 and the consent award was passed by which the claimants were paid compensation at the rate of Rs.251/per sq.mtr. Over and above compensation at the rate of Rs.251/- per sq.mtr, the claimants were also given incentive at the rate of 35% and solatium at the rate of 30% under Section 23(2) of the Act. If the consent award made by the Special Land Acquisition Officer in respect of the lands which were acquired for the new Gujarat High Court building is taken into consideration, it becomes evident that the claimants therein were paid compensation roughly at the rate of Rs.339/- per sq.mtr. The evidence of the witness examined on behalf of the claimants shows that distance between the acquired lands and the new High

Court building is less than 1 km. and, therefore, this consent award also deserves to be taken into consideration while determining the market value of the acquired lands. Again, Exh.68 is order dated April 29, 1996, passed by the District Collector, Ahmedabad, asking Bhikhiben Babaji Lalluji of Nava Vadaj, Ahmedabad, to deposit difference of premium at the rate of Rs.45 per sq.mtr as land bearing Survey No.477/1 of village Gota was permitted to be sold for agricultural purposes after permitting it to be converted from new tenure land to old tenure land. The order Exh.68 further indicates that by an earlier order premium was fixed at Rs.435/- per sq.mt. and by Exh.68, the owner was called upon to deposit additional premium at the rate of Rs.45 per sq.mtr. It means that the total premium was fixed at the rate of Rs.480/- per sq.mtr and if appropriate deductions are made having regard to the time lag between date of notification issued under Section 4(1) of the Act and the date of order Exh.77 as well as distance, the price of the acquired lands as on relevant date would be roughly about Rs.240/- per sq.mtr. Exh.68 is order passed by the Collector and its authenticity is not challenged by the appellant. Similarly, Exh.61, dated October 16, 1997,shows that Survey No.271 of village Sola admeasuring 3750 sq.mtr was given on lease by Government to Nishaben A. Chaudhary and its market value was assessed at Rs.1400/- per sq.mtr. On the basis of said market value, the District Collector, Ahmedabad, had decided to charge rent of Rs.7,87,500/- from the lessee. This is also order passed by the District Collector and neither its authenticity nor the basis of determination of market value in that case is challenged by the appellant. If Exh.61 after making appropriate deductions is taken into account, it can safely be said that the market value of the acquired lands would be roughly Rs.240/- per sq.mtr and in view of the building potentiality of the acquired lands, it would be about Rs.310/- to Rs.320/- per sq.mtr at the relevant date. Thus, the conclusion arrived at by the Reference Court to the effect that the market value of the acquired lands with its building potentiality at the time of publication of notification under Section 4(1) of the Act was Rs.310/per sq.mtr. cannot be said to be erroneous at all, and is amply borne out from the evidence of the record. It is true that, when the building potentiality of the acquired lands is taken into consideration while assessing its market value as on the date of publication of notification under Section 4(1) of the Act, necessary deduction should be made because of expenditure, which may be required to be incurred for developing the lands. Having regard to the facts of the case, we are of the opinion that interest of justice

would be served if 30% is deducted towards expenditure for developing the acquired lands, while determining market value of the acquired lands with its building potentiality. We may state that the acquired lands were situated in a fully developed area as on the date of publication of notification under Section 4(1) of the Act and were not abutting on Gandhinagar-Sarkhej Highway and only few of the acquired lands were abutting on small strip of road leading to Gota. It is true that when building potentiality of the acquired lands is taken into consideration, necessary deductions should be made because of expenditure which may be required to be incurred for developing lands while assessing the market value of the lands as on the date of publication of notification under Section 4(1) of the Act. Having regard to the facts of the case, we are of the opinion that interest of justice would be served if 30% is deducted towards expenditure for developing the acquired lands, while determining market value of the acquired lands with its building potentiality. The submission that belting method should be resorted to while ascertaining market value of the acquired lands has no substance. In Meharban and others, etc. vs. State of U.P. and others, AIR 1997 Supreme Court 2664, it is laid down by the Supreme Court in paragraph 11 of the reported judgment that belting is not reasonable when the entire lands are situated in well defined and developed blocks. We may state that the acquired lands were situated in a fully developed area as on the date of publication of notification under Section 4(1) of the Act and were not abutting Gandhinagar-Sarkhej Highway. Only few of the acquired lands were abutting on a small strip of road leading to Gota-Oganaj road. In (1998) 2 Supreme Court Cases 385, the Supreme Court has laid down principle regarding applicability of belting method to be adopted in respect of land having potentiality of being developed into an urban land and has held as under:

"When a land is acquired which has the potentiality of being developed into an urban land, merely because some portion of it abuts the main road, higher rate of compensation should be paid while in respect of the lands on the interior side it should be at lower rate may not stand to reason because when sites are formed those abutting the main road may have its advantages as well as disadvantages. Many a discerning customer may prefer to stay in the interior and far away from the main road and may be willing to pay a reasonably higher price for that site. One cannot rely on the mere possibility so as to indulge in a meticulous exercise of classification of the land as was done by the Land Acquisition Officer when the entire land was acquired in one block and therefore

classification of the same into different categories does not stand to reason."

If the abovereferred to principles are applied to the facts of the present case, the lands acquired have the potentiality of being developed into urban lands, and, as laid down by the Supreme Court, merely because some portion of the lands acquired abuts on a small strip of Gota-Oganaj road, higher rate of compensation cannot be paid while in respect of the lands in the interior side it cannot be at lower rate and adoption of such method would not stand to reason, because those lands which abut on a small strip of road might have advantages as well as disadvantages and, as observed by the Supreme Court, many a discerning customer may prefer to stay in the interior and far away from the main road and may be willing to pay a reasonably higher price for that site. When the entire land is acquired in one block, classification of the same into different categories does not stand to reason and, therefore, resort to belting method is not warranted by the facts of the case. Thus, the market value of the acquired lands on the relevant date would be Rs.310 minus Rs.93 = Rs.217 per sq.mtr.

10. We may state that the record of the case shows that by an allotment letter land was allotted to Shubh Mangalam Swetamber Moorti Pujak Jain Trust, Ahmedabad, at the rate of Rs.157 per sq.mtr. However, mere allotment letter will not furnish any base for the purpose of ascertaining the market value of the acquired lands. Neither any officer of the Gujarat Slum Clearance Board nor any of the office bearer of Shubh Mangalam Swetamber Moorti Pujak Jain Trust was examined to establish nature of transaction which had taken place. Moreover, allotment letter shows that allotment was conditional and the Gujarat Slum Clearance Board has reserved right to resume possession if any of the conditions is breached by the allottee. Under the circumstances, we are of the opinion that no error was committed by the Reference Court in not placing reliance on the said allotment order while ascertaining the market value of the acquired lands. On behalf of the acquiring body, certified copy of sale indexes were produced at Exhs.74 to 128 but they are also rightly not relied upon by the Reference Court in view of the several reported decisions of the Supreme Court to the effect that, unless and until either vendor or vendee or scribe of the deed is examined, sale transaction indicated in the index cannot be relied upon while ascertaining the market value of the acquired lands. So far as previous award rendered in Land Acquisition Case No.1020 of 1986 and other cases produced at Exh.142 is concerned, we notice that notification

under Section 4 of the Act was published on September 13, 1982. The land acquired was of village Jagatpur and it was touching Sarkhej-Gandhinagar Highway.Therein previous award was relied on and it was observed that prices of lands were increasing by leaps and bounds even in small villages. It was not brought on the record of the case by witness examined on behalf of the appellant that the acquired lands had similar advantages as were available to the said land. Under the circumstances, the Reference Court has rightly concluded that previous award Exh.142 is neither comparable nor relevant for ascertaining market value of acquired lands. The evidence of witness Priyavadan Natwarlal Parikh examined by the appellant shows that at the time when acquisition proceedings were initiated, there were buildings constructed by the Slum Clearance Board near the acquired lands. The assertion made by the witness that New High Court Building is at a distance of 2.1/2 kms to 3 kms from the acquired lands is not found to be true one. The evidence of this witness clearly establishes that near the acquired lands, big residential colony is situated wherein all basic and civic facilities are available. It is true that claimant, Jivanbhai Madhabhai Chowdhary himself had purchased some of the acquired lands at the rate of Rs.60 to Rs.66 per sq.mtr. in the year 1982-83 and had shown willingness to sell those lands at the rate of Rs.120/per sq.mtr in the year 1985 but the development near the acquired lands had taken place in the year 1989 when Mahatma Gandhi Vasahat was established by the Slum Clearance Board. Moreover, neither during the cross examination of this witness nor during the course of recording of evidence of witness Mr. Parikh who was examined on behalf of the appellant, the nature of transaction entered into by witness Jivanbhai was brought out. The prices of lands acquired as reflected in the year 1982-83 or 1985 cannot be treated as proximate in point of time so far as publication of notification under Section 4(1) of the Act is concerned. Under the circumstances, price at which claimant, Mr. Chaudhary had purchased the lands in the year 1982 would not furnish any base for determining market value of acquired lands as on the relevant date.

11. The submission that before the Land Acquisition Officer, the claimants had claimed compensation at the rate of Rs.85/- per sq.mtr and they were not entitled to claim more amount or that the Reference Court had no jurisdiction to grant more compensation, has no substance and deserves to be rejected. Section 25 as substituted by (Act 68/84) Section 17 of the Act 68 of 1984 reads as under:

"25. Amount of compensation awarded by the Court not be lower than the amount awarded by the Collector. x x x x x x x Amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector under Section 11."

Section 25 as amended by Act 68 of 1984 makes it clear that under no circumstances the award made by the Court should be less than the amount awarded by the Collector, By implication, it means that the Court can award higher compensation than what was awarded by the Land Acquisition Officer. On the other hand, the amended Section 25 does not either by implication or explicitly limit compensation amount that could be claimed by a claimant and does not forge a connecting link between the claim made before the Land Acquisition Officer and a claim made before the Court. The result is, the claimant has now full liberty to hike his claim before the Court and will be free to claim any amount before the Court as compensation and this liberty to claim any amount in court remains totally inhibited by any claim made before the Land Acquisition Officer even if there is a great disparity between the two claims i.e., one made before the Land Acquisition Officer and the one made before the Court. As the new section is silent about the barriers, there is no need at all for the claimant to offer any explanation whatsoever as to why he made a lower claim before the Land Acquisition Officer while hiking it up before the Court. Section 25 as it now stands totally obviates the necessity of any claim being led in response to notice under Section 9 of the Act, because the only limitation on the power of the Court which has now been prescribed under the amended Section 25 is that the amount of compensation awarded by the Court shall not be less than the amount of compensation offered by Collector. Section 25 has been interpreted by the Division Bench of the Gujarat High Court in the case of Sharadchandra Chimanlal vs. State, in AIR 1987 Gujarat 55, to mean that having regard to the format of Section 25 following its amendment under Act 68 of 1984, a claimant who had refused to make a claim before the Land Acquisition Officer would be entitled to put forward a claim before Court and seek for its adjudication unhindered by omission to make a claim before the Land Acquisition Officer. The pertinent observations made by the Division Bench are as under:

"Section 25 as it stands now obviates the necessity of any claim being led in response to the notice under S.9 of the Act, because the only limitation on the power of the Court which has now been prescribed under the amended S.25 is that the amount of compensation awarded by the Court shall not be less than the amount offered. In

other words, the Court cannot in a reference application reduce the amount of compensation as offered by the Land Acquisition Officer. The resultant position emerging from the amended section is that even without any such claim the Court can award compensation in excess of what has been awarded by the Collector, which position was not available prior to 1984 since there was a limitation also on the power of the Court in the preamended section that the Court would not award compensation beyond that claimed by a person interested. In other words, the position prior to 1984 was that failure to make a claim despite receiving notice under S.9 without sufficient cause precluded the Court from awarding a sum in excess of Collector's award."

Under the circumstances, the plea that the claimants had claimed less amount of compensation before the Land Acquisition Officer than claimed before the Reference Court and, therefore, the impugned award should be set aside, has no substance and is rejected hereby.

12. In the operative part of the order, the Reference Court has directed that 5% government share should be deducted from the compensation found payable to the claimants in case of new tenure lands. So far as direction given by the Reference Court to deduct 5% government share from the awarded amount in case of new tenure lands is concerned, we notice that the Supreme Court, in the case of State of Maharashtra vs. Babu Govind Gavate, reported in AIR 1996 Supreme court 904, has held that deduction from the market value under Section 43 of the Bombay Tenancy and Agricultural Lands Act, 1948, is not permissible. It has been held that sanction required under Section 43 of the said Act is only when there is a bilateral valid agreement between the owner and a third party purchaser or a lessee or a mortgagee, etc. as envisaged under Section 43(1) but, when the State exercises its power of eminent domain and compulsorily acquires the land, question of sanction under Section 43 does not arise, and deduction of 1/3rd of market value under Section 43 is not permissible. In view of the mandate given by the Supreme Court, we are of the opinion that the Reference Court was not justified in directing that 5% government share should be deducted from the awarded amount in case of new tenure lands and, therefore, the said direction will have to be set aside.

13. As a result of foregoing discussion, the appeals as well as cross appeals are partly allowed. It is held that the claimants would be entitled to compensation for the acquired lands at the rate of Rs.217/- per sq.mtr.

The direction given by the Reference Court to deduct 5% government share from the compensation payable to the claimants in case of new tenure lands is set aside. Rest of the award is upheld. The Office is directed to draw decree in terms of this judgment. There shall be no order as to costs.

Mrs. K.A. Mehta, learned counsel for the appellant has prayed to continue interim relief for reasonable time to enable the appellant to approach the higher forum.

Heard the learned counsel for the parties with regard to continuation of interim relief to enable the appellant to approach the higher forum. Having regard to the facts and circumstances of the case, we are of the view that interest of justice would be served if interim relief granted in the appeals is ordered to continue for a period of three months from today to enable the appellant to approach the higher forum. Therefore, it is directed that the interim relief granted earlier shall continue for further period of three months from today.

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(swamy)